

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ESTATE OF ROGER D. OWENSBY, * CASE NO. C-1-01-769
(Judge S. Arthur Spiegel)

Plaintiff

vs. _____

CITY OF CINCINNATI, et al.

* DEFENDANTS CITY OF CINCINNATI
AND POLICE CHIEF THOMAS
STREICHER, JR.'S MOTION FOR
CONTINUANCE OF TRIAL DATE AND
EXTENDED DISCOVERY DEADLINE

Defendant

Now come the Defendants, City of Cincinnati, Police Chief Thomas Streicher, Jr., David Hunter, Darren Sellers and Jason Hodge by and through counsel, and hereby request this Court grant a continuance of the tentative May 3, 2004 trial date as well as an extension of the January 1, 2004 discovery completion deadline.

Pursuant to this Court's September 16, 2003 Order, granting Leave for the parties to conduct additional discovery beyond limits imposed by the Federal Rules of Civil Procedure, additional time is needed to complete discovery and prepare for trial.

The Defendants file this Motion in good faith and after unsuccessful attempts to consult with the Plaintiffs regarding time extensions. This Motion is more fully supported by the accompanying Memorandum.

Respectfully submitted,

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MEMORANDUM

____This case involves federal 28 U.S.C. §1983 as well as state pendant and ancillary claims related to the November 7, 2000 death of plaintiff's decedent Roger Owensby. On November 8, 2001, Plaintiffs filed this lawsuit against the City of Cincinnati, Police Chief Thomas Streicher, Jr., and numerous other defendants alleging excessive use of force and improper police customs, policies and training. On February 3, 2003, this Court issued an Order scheduling the discovery cutoff deadline as January 1, 2004. Further, the Court tentatively scheduled trial for May 3, 2004, on an on-deck basis. This Order mistakenly suggested the parties have completed a mandatory Rule 26(f) conference and submitted a Joint Discovery Agreement. In fact, such action has not occurred to date.

The defendants request a new discovery deadline and new trial date for several reasons. First, the current discovery and trial dates were set forth seven months before; on September 16, 2003, the Court altered the deposition schedule. Since that time, the Court granted Plaintiff's motion for leave to take depositions exceeding Federal Civil Rule 30(a)(2)(A)'s limits. This decision drastically altered the discovery process as both Plaintiffs and Defendants are permitted to conduct up to thirty fact depositions and five expert depositions each. This substantial increase in discovery activity, which occurred after the earlier discovery and

trial dates were set, warrants establishing a new discovery deadline and trial date.

Second, the Local Rules' expert disclosure deadline is inconsistent with the current January 1, 2004 discovery completion deadline. The Order establishing the January 1, 2004 discovery completion deadline, and May 3, 2004 tentative trial date, noticeably fails to set forth an expert disclosure deadline. Consequently, the Local Rules' standard, that the Plaintiff may disclose experts up to ninety (90) days before trial, controls. To date, the Plaintiffs have not disclosed their experts. Under the Local Rules, however, the Plaintiffs may disclose experts by February 3, 2004 even though the current discovery completion deadline would expire four weeks earlier on January 1, 2004. Under these circumstances, a new discovery completion deadline and trial date should be set to remedy this inconsistency.

Finally, the Order which set forth the current discovery completion deadline and tentative trial date mistakenly assumed the parties completed a mandatory Rule 26(f) conference and submitted a Joint Discovery Agreement. Such action has not occurred to date. Since the Court mistakenly believed such action had occurred, it follows the Court might have scheduled upcoming discovery completion and tentative trial dates based on the assumption the parties had reached agreement on many discovery issues already. Since the parties have not agreed upon discovery issues and must conduct a Rule 26(f) conference in the future, the earlier

discovery completion and tentative trial dates should be vacated.

It should be noted the defendants attempted to resolve this issue with the Plaintiffs informally before filing this motion for leave. (Exhibit A). Local Rule 7.3(a) states that before filing any motion for time extension, "counsel shall consult with all parties ... whose interests might be affected by the granting of such relief and solicit their consent to the extension." The attached October 15, 2003 letter establishes defense counsel's good faith attempt to solicit opposing counsel's consent. In turn, the attached October 17, 2003 response letter further establishes opposing counsel's unreasonable, yet unwavering opposition. Obviously, opposing counsel seeks an unfair advantage by refusing to consent to a much-needed, reasonable time extension. Thus, defense counsel requests leave for an extended discovery completion deadline and new trial date in good faith and in compliance with Local Rule 7.3(a).

CONCLUSION

____For the foregoing reasons, defendants City of Cincinnati and Police Chief Thomas Streicher, Jr., David Hunter, Darren Sellers and Jason Hodge, respectfully request the Court grant a continuance of the current tentative May 3, 2004 trial date and extension of the current January 1, 2004 discovery completion deadline.

Respectfully submitted,

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PROOF OF SERVICE

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